



{In Archive} RE: Siemens' Request for Confirmation on Effect of Merger

Stephen M. Richmond

to:

Mimi Newton

05/06/2010 12:59 PM

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From: "Stephen M. Richmond" <SRichmond@bdlaw.com>

To: Mimi Newton/R9/USEPA/US@EPA,

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Thanks Mimi.

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**From:** Newton.Mimi@epamail.epa.gov [mailto:Newton.Mimi@epamail.epa.gov]

**Sent:** Thursday, May 06, 2010 3:57 PM

**To:** Stephen M. Richmond

**Cc:** Mccue, Monte W (WT); Davis, Peter J (WT); Zabaneh.Mike@epamail.epa.gov; Nelson.Cheryl@epamail.epa.gov; Smith.Rebecca@EPA.GOV; Lyons.John@epamail.epa.gov

**Subject:** Siemens' Request for Confirmation on Effect of Merger

Steve

This will confirm that the anticipated merger described in your email below is not considered an ownership change or operational change under 40 CFR 270.72(a)(4) and therefore does not require a revision to the part A permit application. However, we do request that Siemens amend their Letter of Credit to show the new corporate name when they renew it to adjust the amount for inflation in February 2011.

Please let me know if you have any questions.

Mimi Newton

Assistant Regional Counsel

US EPA Region 9

75 Hawthorne St. (ORC-3)

San Francisco, CA 94105

(415) 972-3941

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From: "Stephen M. Richmond" <SRichmond@bdlaw.com>

To: Mimi Newton/R9/USEPA/US@EPA

Cc: "Mccue, Monte W (WT)" <Monte.Mccue@siemens.com>, "Davis, Peter J (WT)" <Peterj.Davis@siemens.com>

Date: 04/16/2010 03:42 PM

Subject: Request for Confirmation on Effect of Merger

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Mimi - thank you for speaking with me yesterday about the effect of an intra-company merger on an interim status facility. I am writing to seek reconfirmation from EPA that a corporate merger of a wholly owned subsidiary into and with a parent company does not constitute a change in ownership or operational control, as that term is used in the interim status rule at 40 CFR 270.72(a)(4). We discussed and corresponded on this issue several years ago involving a single level merger, and at that time Region 9 agreed that such a merger was not a change in ownership or operational control. I am attaching a copy of the e-mail documenting that exchange for your convenience. The transaction that we are inquiring about this time is the same in concept, with the only difference being that it involves two levels within a company rather than one. The concept and conclusions we believe are identical. I set forth the facts that give rise to our inquiry below, and ask that you confirm by return e-mail if Region 9 agrees with our conclusion.

Siemens Water Technologies Corp (SWT) operates a hazardous waste management facility in interim status

under 40 CFR Part 265 and 270. SWT is part of the Siemens family of companies and Siemens is in the process of simplifying its corporate structure by merging many of its operating companies in the United States into a single company, Siemens Industry, Inc., which is now an indirect parent company of SWT.

Currently, SWT is a wholly owned (100%) subsidiary of Siemens Water Technologies Holding Corp (SWTH), which itself is a wholly owned (100%) subsidiary of Siemens Industry, Inc. (SII). In the Fall of this year, Siemens intends to merge SWT with and into SWTH, and then merge SWTH with and into SII. Several similar mergers of subsidiaries with and into SII will occur, with the result that SII will become the principal operating company for Siemens in the United States. SII currently is the indirect 100% owner of SWT, and after the transaction is completed, SWT will simply have merged with and into a parent company. SII itself is an intermediate company, which is ultimately owned by the highest level Siemens entity, Siemens AG.

As the contemplated merger does not involve any new ownership structures, and as it retains all decision making within the existing chain of Siemens entities - that is, all of the entities are 100% within the Siemens family of companies, and the merged companies continue to exist under corporate law in their new merged forms -we do not believe there is any change in ownership or operational control. Under 40 CFR 270.72(a)(4), a change in ownership or operational control is authorized at an interim status facility if a revised Part A application is submitted at least 90 days prior to the change. In this case, we believe that the proposed merger does not constitute a change in ownership or operational control, and that a revised Part A application is therefore not required prior to the mergers. This is functionally no different than our mutual conclusion several years ago, which is documented in the attached correspondence.

Kindly let me know by return e-mail if Region 9 agrees with our conclusion in this analysis that a revised Part A is not required under 40 CFR 270.72(a)(4). SII would be happy to provide a letter to EPA prior to and immediately after the merger so that EPA remains fully apprised of the merger schedule.

Should you have any questions I hope you will not hesitate to contact me.

Best regards.

**Stephen M. Richmond**

Beveridge & Diamond, PC  
15 Walnut Street ~ Suite 400  
Wellesley, MA 02481  
T (781)416-5710 ~ F (781)416-5780  
[srichmond@bdlaw.com](mailto:srichmond@bdlaw.com)

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